

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
ELKINS

DALE P. FIELD, JR.,

Plaintiff,

Civ. Action No. 2:19-CV-36
(Kleeh)

ALTRIA GROUP, INC.,

Defendant.

ORDER ADOPTING REPORT AND RECOMMENDATION [ECF NO. 15],
GRANTING MOTION TO DISMISS [ECF NO. 4], AND
GRANTING MOTION TO AMEND COMPLAINT [ECF NO. 7]

Pending before the Court is a Report and Recommendation ("R&R") by the Honorable Michael J. Aloï, United States Magistrate Judge. For the reasons discussed below, the Court adopts the R&R.

I. PROCEDURAL HISTORY

This action was originally filed in the Circuit Court of Randolph County, West Virginia. It was timely removed to the Northern District of West Virginia on June 10, 2019. The Plaintiff, Dale P. Field, Jr. ("Field"), brought ten claims against the Defendant, Altria Group, Inc. ("Altria"): (I) Negligence; (II) Misrepresentation; (III) Advertising Injury; (IV) Moral Wrong; (V) Intentional Wrong; (VI) Harmful Behavior; (VII, VIII, IX) Bodily Harm, Physical Harm, Continuing Harm; and (X) Irreparable Injury. Altria moved to dismiss the Complaint

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for lack of personal jurisdiction. Plaintiff filed a Motion to Add Defendant, seeking to name Philip Morris USA, Inc. ("Philip Morris") as an additional defendant without dismissing the claims against Altria. Plaintiff also filed a Response to the Motion to Dismiss.

Pursuant to 28 U.S.C. § 636, the Court referred this action to United States Magistrate Judge Michael J. Aloï for review. Altria then filed a Reply to its Motion to Dismiss. On October 29, 2019, Judge Aloï entered his R&R. The R&R recommends that the Court grant Altria's Motion to Dismiss and that the Court construe the Motion to Add Defendant as a Motion to Amend the Complaint. It further recommends that the Court grant the Motion to Amend the Complaint. Judge Aloï directed Field to file an Amended Complaint on Philip Morris within 21 days of receipt of the Report and Recommendation. After a request for an extension was granted, Field filed an Amended Complaint on December 23, 2019, naming Philip Morris as a defendant.

II. STANDARD OF REVIEW

When considering a magistrate judge's R&R pursuant to 28 U.S.C. § 636(b)(1), the Court must review de novo those portions

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to which objection is timely made. Otherwise, "the Court may adopt, without explanation, any of the magistrate judge's recommendations" to which there is no objection. Dellarcirprete v. Gutierrez, 479 F. Supp. 2d 600, 603-04 (N.D.W. Va. 2007) (citing Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983)). Courts will uphold portions of a recommendation to which no objection has been made unless they are clearly erroneous. See Diamond v. Colonial Life & Accident Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005).

Here, the parties were ordered by Judge Aloï to file written objections to the R&R within fourteen (14) days after being served with a copy of it. The parties were notified that failure to timely file written objections "shall constitute a waiver of de novo review by the District Court and a waiver of appellate review by the Circuit Court of Appeals." To date, no party has filed objections to the R&R. Accordingly, the Court has reviewed the R&R for clear error.

III. CONCLUSION

Upon careful review of the above, and finding no clear error, the Court **ORDERS** the following:

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- The R&R is **ADOPTED** [ECF No. 15];
- Altria's Motion to Dismiss [ECF No. 4] is **GRANTED**;
- All claims against Altria are hereby **DISMISSED WITH PREJUDICE**;
- Field's Motion to Add Defendant [ECF No. 7] is construed as a Motion to Amend Complaint;
- The Motion to Amend Complaint [ECF No. 7] is **GRANTED**; and
- The Amended Complaint [ECF No. 21] is deemed **FILED** as of **TODAY**.

It is so **ORDERED**.

The Court **DIRECTS** the Clerk to transmit copies of this Order to counsel of record, to the pro se plaintiff via certified mail, return receipt requested, and to the Honorable Michael J. Aloia, United States Magistrate Judge. The Clerk is also **DIRECTED** to issue a summons for Field's use.

DATED: February 3, 2020

/s/ Thomas S. Kleeh

THOMAS S. KLEEH
UNITED STATES DISTRICT JUDGE